

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the Trespass
Citation Issued to Andrew Shane Biddle

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came before Administrative Law Judge Eric L. Lipman for a telephone Pre-Hearing Conference and evidentiary hearing on March 22, 2012.

Conservation Officer Corey Wiebusch appeared on behalf of the Minnesota Department of Natural Resources (Department). Andrew Shane Biddle, the Appellant trapper, appeared on his own behalf and without counsel. The hearing record closed at the conclusion of the evidentiary hearing.

STATEMENT OF THE ISSUE

1. Whether Mr. Biddle remained on land for outdoor recreation purposes after being orally told not to do so by the owner, occupant, or lessee, in violation of Minn. Stat. § 97B.001, subd. 3?

The Administrative Law Judge concludes that Mr. Biddle entered certain privately-owned land for recreation purposes, and remained there after being directed to leave by the owner, in violation of Minn. Stat. § 97B.001, subd. 3. Accordingly, the Administrative Law Judge recommends that the Commissioner AFFIRM the citation.

FINDINGS OF FACT

1. On the morning of Sunday, October 23, 2011, the appellant, Mr. Biddle was setting a bear trap in a roadside culvert near 40th Street in Elmore Township, Minnesota.¹

2. The culvert is on land owned by the Krosch family. Sherwood Krosch and his wife live in a home at one end of a set of 160-acre parcels between 385th Avenue and 40th Street in Elmore Township. Mr. Krosch's daughter and son-in-law, Jennifer

¹ Citation 46286; Testimony of Sherwood Krosch; Testimony of Jennifer Krosch Pierce; Testimony of Andrew Biddle.

Krosch Pierce and Daniel Pierce, live in a home at the southwest end of the same set of adjoining parcels.²

3. On the morning of October 23, 2011, while the Pierces were driving from their residence to the Krosch home for Sunday brunch, they noticed Mr. Biddle in the culvert that runs along 40th Street. The Pierces stopped their car, exited the vehicle and inquired of Mr. Biddle what he was doing on their land. Mr. Biddle responded that he was trapping and asserted that he had the legal right to do so within the right-of-way of the township road.³

4. The Pierces replied that the culvert was on land owned by their family and that they did not permit trapping. They asked Mr. Biddle to leave the premises.⁴

5. A short while later, the request that Mr. Biddle leave the property was renewed, in person, by the landowner, Sherwood Krosch.⁵

6. When Mr. Biddle did not promptly comply with the request to leave, the Pierces telephoned the Faribault County Sheriff's office and made a complaint that Mr. Biddle was trespassing.⁶

7. Believing that he had a legal right to set traps within the right-of-way of the township road, Mr. Biddle preferred to await instruction from the Deputy Sheriff who, he was told, was responding to the scene.⁷

8. En route to Elmore Township, Faribault County Sheriff Shane Dulack conferred with Conservation Officer Corey Wiebusch on the state rules for setting bear traps. By the time that Deputy Dulack arrived at the scene, Mr. Biddle had removed the traps from the culvert and placed the traps in the back of his pickup truck.⁸

9. When advised that by Deputy Dulack that he did not have a right to trap in the culvert, Mr. Biddle left the area.⁹

10. The Department of Natural Resources' *Minnesota Hunting & Trapping Regulations Handbook 2011* states:

² Test. of S. Krosch; Test. of J. Pierce.

³ Test. of J. Pierce; Test. of A. Biddle.

⁴ *Id.*

⁵ Test. of S. Krosch.

⁶ *Id.*

⁷ Test. of J. Pierce; Test. of A. Biddle.

⁸ *Id.*; Testimony of Shane Dulack.

⁹ *Id.*

Some road right-of-ways are not owned by a unit of government. In these instances the landowner has granted an easement for vehicle and foot travel. The landowner generally retains authority to restrict access for hunting or trapping and may prohibit trespass by posting the land or by verbally directing hunters and trappers to leave the easement. It's always best to ask permission if in doubt about the ownership of a road ditch area. County or township offices also may be able to help determine the ownership status of a road ditch.¹⁰

11. On January 6, 2012, Conservation Officer Corey Wiebusch issued Citation 46286. The citation asserted that Mr. Biddle trespassed on privately-owned land.¹¹

12. Mr. Biddle timely appealed the citation.¹²

Based upon these Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 97B.002 and 116.072, subd. 6.

2. Minn. Stat. § 97B.001, subd. 3 provides that except as needed to retrieve a hunting dog, "a person may not remain on any land for outdoor recreation purposes after being orally told not to do so by the owner, occupant, or lessee."

3. Not all road right-of-ways are owned by a unit of government. Some lands abutting township roads are privately-owned property.¹³

4. The Department bore the burden of proof to establish that Mr. Biddle violated Minn. Stat. § 97B.001, subd. 3.¹⁴

5. The Department established that by declining to leave the 40th Street culvert after being advised by the owner to do so, Mr. Biddle violated Minn. Stat. § 97B.001, subd. 3.

Based upon the Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

¹⁰ Testimony of Corey Wiebusch.

¹¹ Citation 46286.

¹² Appeal Letter (January 16, 2012).

¹³ See *generally*, Minn. Stat. § 160.04.

¹⁴ Minn. R. 1400.7300, subp. 5.

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commissioner of Natural Resources AFFIRM the citation.

Dated: May 7, 2012

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded.

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69.

MEMORANDUM

While Mr. Biddle believed that he had the right to enter on to land abutting 40th Street, and remain there for the purposes of trapping, he was mistaken.

The trespass statute, Minn. Stat. § 97B.001, subd. 3, places the risk of that mistake on the person who remains after receiving a lawful direction to leave the premises.

Because Mr. Biddle was not entitled to remain on private property until the landowner's direction to leave was confirmed by a Deputy Sheriff, the Commissioner should affirm the citation.

E. L. L.